

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

D. E. WHEELER and D. W. RIDENOUR,
partners doing business under the firm
name and style of Wheeler & Ridenour,

Plaintiffs in Error,

vs.

THE COUNTY OF PLUMAS,

Defendant in Error.

FILED
OCT 23 1902

Brief for Plaintiffs in Error

A. E. CHENEY,

J. C. CAMPBELL,

W. H. METSON,

Attorneys for Plaintiffs in Error

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT.

D. E. WHEELER and D. W. RIDE-
NOUR, partners doing business under
the firm name and style of Wheeler &
Ridenour,

Plaintiffs in Error,

vs.

THE COUNTY OF PLUMAS,

Defendant in Error.

No. 833.

BRIEF FOR PLAINTIFF IN ERROR.

Statement of the Case.

This cause comes before this Honorable Court on writ of error, prosecuted to review a judgment of the Circuit Court, Ninth Circuit, Northern District of California, entered therein on the default of defendants (here plaintiffs in error) after demurrer overruled by the Hon. W. W. Morrow, the Judge of that Court.

The action was prosecuted by the County of Sierra, a county of the State of California, and a body politic and corporate under the laws thereof, against these plaintiffs in error, citizens of the State of Nevada, to

recover a certain tax authorized by ordinance of that county, which purported to levy "a license tax on persons, firms, co-partnerships and corporations, carrying on the business of raising, grazing, herding or pasturing sheep or lambs within the County of Plumas, and providing for the collection of the same." (Record p. 2.)

This ordinance, so far as material to our argument is as follows:

"Sec. 1. Every person, firm, co-partnership or corporation, engaged in the business of raising, grazing, herding or pasturing sheep or lambs within the County of Plumas, State of California, must annually procure a license therefor from the license collector of said county and shall pay therefor the sum of \$10 for each one hundred sheep or lambs owned by, in the possession or under the control of such person.

"Sec. 2. Each and every person, co-partnership, firm or corporation, who may engage in the business of raising, grazing, herding or pasturing sheep or lambs within the County of Plumas, State of California, in order to procure a license therefor, must present to the license collector of Plumas County at the time of making application therefor, an affidavit showing the number of sheep and lambs owned by, in the possession of, and under the control of such applicant for license within the County of Plumas, and upon presenting such affidavit and the payment of the license tax, as prescribed in Section 1 of this ordinance, the applicant shall be granted a license to graze,

“ herd or pasture sheep or lambs within the County of
 “ Plumas.

“Sec. 5. The county auditor shall prepare and
 “ have printed suitable blank licenses for the license
 “ collector to carry out the provisions of this ordinance,
 “ with blank receipts for the license collector when sold.

“Sec. 6. The license collector shall collect a fee of
 one dollar for each license sold, which shall be paid into
 the salary fund of the county.

“Sec. 7. All money collected for license under the
 “ provisions of this ordinance shall be paid over to the
 “ county treasurer, as other moneys are, and placed to
 “ the credit of the general fund of the county.

“Sec. 8. The license to be collected under this ordin-
 “ ance is a debt owing to the County of Plumas; and
 “ shall become due and payable to said county in ad-
 “ vance at the office of the license collector of said
 “ county.”

The plaintiffs in error during the months of May
 and June were engaged in the business of raising, graz-
 ing, herding and pasturing sheep, and lambs in that
 county, and had in their possession and under their
 control 21,000 head (p. 6). They did not procure a
 license nor pay the tax as required by the ordinance
 (p. 7). This action was accordingly brought under the
 ordinance for \$2100, as owing the defendant in error,
 and \$50.00 damages (p. 7).

The defendants (plaintiffs in error) demurred to the
 complaint upon the ground that it does not state facts
 sufficient to constitute a cause of action (p. 22). The

Court overruled the demurrer with leave to answer (p. 24). The defendants failed to answer, and upon their default judgment was entered against them for the sum of \$2150 and costs (p. 27). This is the judgment now sought to be reviewed.

Assignment of Error.

The plaintiff in error relies upon the following assignment of error for the purpose of this argument:

I.

The complaint does not state facts sufficient to constitute a cause of action.

II.

The Court erred in making and entering an order overruling the demurrer to the complaint.

III.

The Court erred in giving, making and entering judgment for plaintiff and against defendant.

By stipulation of counsel this cause is submitted upon the briefs for plaintiff in error in that certain cause entitled "*P. L. Flanigan*, plaintiff in error, v. *The County of Sierra*, defendant in error", and numbered 832, now pending in this Court.

Respectfully submitted,

A. E. CHENEY,
J. C. CAMPBELL,
W. H. METSON,

Attorneys for plaintiffs in error.